

UNLOCKING THE PROMISE OF KEVIN'S LAW

When adopted 10 years ago, Kevin's Law was hailed as permitting early intervention in the course of someone's mental illness in order to avoid harm. The promise of Kevin's Law was to offer Assisted Outpatient Treatment (AOT) as a method to avoid the cycle of repeated hospitalization, homelessness and incarceration. However, in the last 10 years, Kevin's Law has been sorely underutilized and the promise remains unmet.

Lt. Governor Calley convened a panel to look for ways to stimulate more use of AOT and make recommendations to address barriers to the use of AOT in order to unlock the promise of Kevin's Law. This bill is the product of that panel and addresses the following recommendations to increase the use of AOT:

1. AOT should be an option in all petitions seeking mental health treatment.
2. There should only be one streamlined petition process to seek mental health treatment.
3. The process should be further simplified for those petitions where only AOT is sought, allowing earlier intervention prior to crisis.

Currently, cases seeking mental health treatment are commenced either as applications, petitions for hospitalization, or petitions for AOT. This bill provides for one simplified process for seeking mental health treatment while preserving all due process protections. The bill also clarifies that AOT can be explored as an option for any case where treatment may be ordered.

Most significantly, the bill fulfills the promise of Kevin's Law by clearly providing that it will not be necessary to wait for a crisis before intervening to help someone. It will be possible to help people earlier, on an outpatient basis. If the person's lack of understanding of their need for mental health treatment presents a substantial risk of harm in the near future, the court can order treatment. Further, it will not be necessary to prove that the individual is currently noncompliant with treatment that has been recommended by a mental health professional. Privacy issues make this an impossible burden to prove and the person may not have a current treatment plan.

The Mental Health Code, as currently designed, is an in-patient model in an out-patient world. These changes will align the Mental Health Code with the current model of mental health care delivery and will be enthusiastically received by all who have experienced the frustration of trying to help loved ones who cannot recognize their need for treatment.

Kevin's Law Changes
(Increasing access to assisted outpatient treatment in Michigan)

- Changes to Kevin's law will allow Michiganders with untreated mental health issues gain access to appropriate treatment earlier.
- The changes will also allow hospitalized individuals who would benefit from assisted outpatient treatment to return to their homes.
- The original Kevin's Law (enacted in 2005) has been ineffective and needs reform.
 - This legislation updates and simplifies the law to clear up confusion on how it can be used. That confusion has led to underutilization by the courts, the mental health community, and friends and family members.
- The legislation streamlines the process for connecting those in need with mental health care.
- Under the legislation, the courts, friends and family members, and the mental health community will have greater flexibility to utilize provisions of the 2005 law.
- Assisted outpatient treatment ("AOT") is cost-effective and works well. Evaluations have shown that this treatment improves outcomes and decreases state incarceration, homeless shelter and hospitalization costs.
- Making AOT more accessible will help address the root cause of many avoidable law enforcement interactions and incarcerations.
- The Mental Health Diversion Council, chaired by Lt. Gov. Calley, established a panel to address concerns with Kevin's Law and identify how it can be used better.
- This legislation is common sense and will help protect individuals with treatable mental health issues, increase options for mental health care, and bolster public safety.
- By addressing barriers that keep people from utilizing the most appropriate and least-restrictive treatment options, the legislation will help those with mental illness get the treatment they need, which can prevent incidents in the future.
- Before this treatment is ordered, it must be shown that the individual meets criteria according to a physician/licensed psychologist and psychiatrist. Further, the individual has a right to a court hearing and counsel.

Three primary updates:

- Assisted outpatient treatment will become an option in all petitions seeking mental health treatment.
- Early intervention will be allowed for individuals whose mental illness prevents them from understanding their need for treatment (as a practical matter, current law requires a serious incident before this treatment can be requested).
- There will be one process and one petition for all situations involving mental health treatment, making the system less confusing, more accessible and better able to address each individual's particular needs.
- At the same time, the extensive due process protections that exist in current law will be maintained.

PROPOSED CHANGES TO ASSISTED OUTPATIENT TREATMENT (ALSO KNOWN AS “KEVIN’S LAW”) IN MICHIGAN

Assisted outpatient treatment (AOT) proactively connects community services to adults with severe mental illness who have had difficulty complying with treatment voluntarily. Many persons with severe, uncontrolled mental illness don’t recognize their condition or critical need for treatment. If individuals have experienced certain legally specified difficulties, AOT law permits intervention before the highest levels of psychiatric crisis might be reached.

Michigan already enacted AOT law in 2005. AOT law exists in Michigan and many other states. Michigan will continue to have AOT law whether or not changes to it are made in 2015.

The current problem is that AOT has been little used to date in Michigan. A 2014 statewide survey by the Mental Health Association found the chief reason was that the law is deemed to be too complex and confusing. The Governor’s Mental Health and Wellness Commission as well as the state’s Mental Health Diversion Council determined that AOT law should be changed to promote greater usage.

The proposed changes to the law fill in gaps that weren’t addressed in 2005; give greater clarity to certain points; simplify the process of how the possible need for a treatment order is brought to a court’s attention; give greater flexibility to Community Mental Health Services Programs (CMHSPs) or other treatment providers that courts may utilize; and enhance the possibility of using AOT with persons who have just been discharged from psychiatric hospitals but aren’t yet fully stabilized and have no other community service options (a common occurrence). This would be consistent with several other jurisdictions across the country.

Possible AOT subjects have several due process rights protections. An individual has the right to free, court-appointed counsel, a court hearing (which he or she may choose to attend), and a juried hearing if desired. Before an AOT order is issued, it must be shown that the subject meets AOT eligibility criteria, and a **psychiatrist, as well as a physician or licensed psychologist**, must examine the individual and subsequently **give testimony or written opinion** to the court. If an AOT order says a treatment plan should include medication, the subject’s medication preferences must be considered. Also required to be considered is any treatment plan presently existing for the subject and any advance psychiatric directive (APD) he or she previously established. And if no APD exists, the subject shall be offered assistance in developing one if desired.

AOT has proven cost-effective. Evaluations of AOT in multiple jurisdictions across the country have shown it improves treatment outcomes and ultimately lowers the cost of what society had been spending on subjects pre-AOT (incarceration; homeless shelter; hospitalization and other manners of on-and-off treatment spurts).